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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 221 of 1991

with

INCOME TAX REFERENCE Nos 31 and 178 of 1992

and

INCOME TAX REFERENCE No 1 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NIKON ENGINEERING P LTD

Appearance:

1. INCOME TAX REFERENCE No. 221/91, 31/92 & 1/93
MR MIHIR JOSHI with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

2. INCOME TAX REFERENCE No. 178/92
MR MIHIR JOSHI with MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In ITR No.221 of 1991, the following questions have been referred for our opinion in respect of assessment year 1985-86:-

(i) Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is eligible for investment allowance and thereby directing the I.T.O. to allow the same after verification?

(ii) Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is an industrial company, lower rate of tax is to be applied ?

2. In ITR No.31 of 1992, the following question has been referred for our opinion in respect of assessment year 1981-82:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is an industrial undertaking and entitled to deduction on account of investment allowance ?"

3. In ITR No.178 of 1992, the following question has been referred for our opinion in respect of assessment year 1983-84:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to investment allowance of Rs.15,738/- u/s.32A of the Act, particularly when the conveyor Machinery was used only in road construction work and was not used in any manufacturing activities, for the purpose of sec.32A(2) of the I.T. Act, 1961?"

4. In ITR No.1 of 1993, the following question has been referred for our opinion in respect of assessment year 1983-84:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is an industrial undertaking and thereby entitled to deduction under section 80HH of the Act?"

5. We have heard Mr Mihir Joshi learned counsel for the revenue. We have also heard Mr RK Patel learned counsel for the respondent-assessee in Income Tax Reference No.178 of 1992. In other three references, none appears for the respondent-assessee, though served.

6. We have taken up all these references for disposal by a common decision as the identical issue involved in the questions referred to this Court in the present group of references is:

"Whether the respective assesses were carrying on an industrial activity within the meaning of sec.32A of the Act while engaged in the business of construction of roads, buildings, tunnels etc.?"

7. Our attention has been invited to the decision of the Apex Court in CIT vs. N.C. Budharaja 204 ITR 412 which has also been followed in Builders Associations of India vs. Union of India & Ors. 209 ITR 877, taking the view that construction of roads, buildings, tunnels etc. is not an industrial activity as contemplated by the provisions of sec. 32A of the Income tax Act, and therefore, the assesses are not eligible to investment allowance under section 32A of the Income Tax Act, 1961.

Accordingly, our answer to the questions referred to us in these references is in the negative i.e. in favour of the revenue and against the assessee.

8. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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